



May 15, 2002

Ms. Mia M. Martin  
General Counsel  
Richardson Independent School District  
400 South Greenville Avenue  
Richardson, Texas 75081-4198

OR2002-2568

Dear Ms. Martin:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 162974.

The Richardson Independent School District (the "district") received a written request for various records in connection with a complaint the requestor filed with the State Board of Educator Certification regarding a particular teacher. You state that many of the requested records have been released to the requestor and that other requested records do not exist.<sup>1</sup> You contend that certain other requested information is excepted from required public disclosure pursuant to sections 552.101, 552.107, and 552.111 of the Government Code.<sup>2</sup> This office has also received comments from the requestor regarding the records request. *See* Gov't Code § 552.304.

We note at the outset that the Public Information Act expressly incorporates the provisions of the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g ("FERPA"). Gov't Code § 552.026. FERPA gives parents the right to inspect the education records of their children. 20 U.S.C. § 1232g(a)(1)(A). Under FERPA, "education records" are those records, files, documents, and other materials which

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<sup>1</sup>The Public Information Act does not require a governmental body to obtain information not in its possession or to prepare new information in response to a requestor. Open Records Decision No. 445 (1986).

<sup>2</sup>Although you also contend that the requested information is excepted from public disclosure under section 552.102 of the Government Code and Rule 503(b)(1) of the Texas Rules of Evidence, you have neither made any specific arguments regarding these provisions nor marked the submitted documents to indicate the information to which they would apply. We therefore do not consider the applicability of either of these provisions to the records at issue. *See* Gov't Code §§ 552.301(e)(2), .302.

- (i) contain information directly related to a student; and
- (ii) are maintained by an educational agency or institution or by a person acting for such agency or institution.

*Id.* § 1232g(a)(4)(A). We believe that the information you seek to withhold consists of “education records” for purposes of FERPA. *See* Open Records Decision No. 462 at 15 (1987). We first note that although you contend that the letter of reprimand you submitted to this office is made confidential under section 21.355 of the Education Code, this document constitutes an “education record” because it contains “information directly related to a student.” *See* 20 U.S.C. § 1232g(b)(1). The requestor, as a representative of that student’s parents, has a special right of access to the letter of reprimand. *See* 20 U.S.C. § 1232g(a)(1)(A). Generally, state law is preempted by FERPA to the extent there is a conflict. *See, e.g., Equal Employment Opportunity Comm’n v. City of Orange, Texas*, 905 F. Supp 381, 382 (E.D. Tex. 1995); *see also* Open Records Decision No. 431 (1985) (FERPA prevails when in conflict with state law). Consequently, the district may not rely on section 21.355 of the Education Code to withhold the letter of reprimand, and must release it to the requestor.

We now address the extent to which the district may withhold the e-mail communications you submitted to this office. You contend that these records come within the attorney-client and attorney work product privileges. The e-mail communications also constitute “education records” to the extent they consist of information directly related to a student. However, the Family Policy Compliance Office of the United States Department of Education has informed this office that a parent’s right to information about his child under FERPA does not prevail over a school district’s right to assert the attorney-client and work product privileges. We will, therefore, consider your claims regarding these privileges.

Section 552.107(1) of the Government Code protects information coming within the attorney-client privilege. Section 552.107(1) excepts information that an attorney cannot disclose because of a duty to his client. In Open Records Decision No. 574 (1990), this office concluded that section 552.107(1) excepts from public disclosure only “privileged information,” that is, information that reflects either client confidences to the attorney or the attorney’s legal advice or opinions; it does not apply to all client information held by a governmental body’s attorney. Open Records Decision No. 574 at 5 (1990). After reviewing the information at issue, we agree that most of the communications you have highlighted constitute privileged attorney-client communications and thus may be withheld under section 552.107(1). We have marked the documents accordingly.<sup>3</sup> The remaining information in the e-mail communications must be released to the requestor.

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<sup>3</sup>Because we resolve this aspect of your request under section 552.107(1), we need not address the other exceptions you raised for this information.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

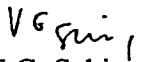
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code

§ 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

  
V.G. Schimmel  
Assistant Attorney General  
Open Records Division

VGS/RWP/sdk

Ref: ID# 162974

Enc: Marked documents

c: Mr. Michael Ellis  
10206 Lakemere  
Dallas, Texas 75238  
(w/o enclosures)